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SYMPOSIUM: STATE COURTS IN THE 1980s AND BEYOND

INTERSTATE VENUE

*Geoffrey C. Hazard, Jr. **

As a dedication to Walter V. Schaefer, a preeminent state court judge, this article is addressed to state court justice. The problem it addresses is the question of state court jurisdiction in cases that have out-of-state elements, the problem classically associated in American law with the decision in *Pennoyer v. Neff*.¹ Its purpose is to suggest how that problem might be looked at in the future. In advancing that suggestion, existing law is taken as a point of departure in the quest for doctrine better suited to the exigencies of modern litigation. What is sought is an organizing idea toward which decisional law should tend with definite but unhurried purpose.

The substance of the idea is simply stated: state court jurisdiction should be considered a problem of venue in a national court system that is managed primarily by the states. Hence, a state court should be regarded as having territorial jurisdiction of a controversy if that state is an appropriate forum according to the criteria employed in typical venue provisions. This thesis is not particularly bold, for it represents only a modest extension of the law as it stands. Still, as a theory, it is a definite alternative to the proposition that state court jurisdiction is a

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¹ 95 U.S. 714 (1877).

problem of "state sovereignty,"² and it may yield some practical outcomes that are different from those produced under traditional theory.

THE ROLE OF STATE COURTS IN MULTISTATE CASES

The argument in support of the theory is animated by a specific practical consideration. This is that the court system of the United States, considered as a whole, should be so constructed that it can provide reasonably convenient administration of justice in all litigation arising from the country's domestic affairs. There is, of course, no reason *a priori* why the court system of the United States should do this; a legal system is not impelled to be rationally organized. For example, there was no reason *a priori* why the common law forms of action should have furthered the convenient administration of justice, and as a matter of fact they did not, but Anglo-American jurisprudence survived. Still, if the court system could provide reasonably convenient administration of justice in domestic multistate litigation, that would serve a valuable public purpose and therefore be an objective worth pursuing. And, assuming that the objective is worthwhile, evidently it will be realized only through the state court system.

This is because the federal court system never has been and never will be in a position to meet that need. From the beginning, the federal courts have labored under limitations on their effectiveness as administrators of justice in precisely the types of cases in which they could have been most useful. These were the cases of disputes between parties from more than one state, especially those involving several parties from several states. In such cases, it could have been provided that diversity would be deemed to exist if any of the parties was diverse in citizenship from another party;³ that venue be sited in the federal district court in which the action could most conveniently be tried;⁴ and that federal process reach the parties to be joined wherever they might

² As stated in *Pennoyer v. Neff*, the proposition is as follows: "The several States of the Union . . . possess and exercise the authority of independent States, and the principles of public law . . . are applicable to them. One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory." 95 U.S. at 722. See *Hanson v. Denckla*, 357 U.S. 235, 251 (1958): "[R]estrictions on the personal jurisdiction of state courts . . . are a consequence of territorial limitations on the power of the respective States." Compare *RESTATEMENT OF CONFLICT OF LAWS* § 47, Comment c (1934), treating the relation between states in the United States as similar to the relation between the United States and other nations with the analysis in *RESTATEMENT (SECOND) OF JUDGMENTS* § 7, Comment a (Tent. Draft No. 5, 1978), in which interstate and international jurisdiction are assimilated, but differences are noted in the legal basis of jurisdiction in the two situations. See Ehrenzweig, *From State Court Jurisdiction to Interstate Venue*, 50 OR. L. REV. 103 (1971).

³ Cf. *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523 (1967) (only minimal diversity required under federal interpleader statute, 28 U.S.C. § 1335 (1976)).

⁴ See 28 U.S.C. § 1404(a) (1976). Cf. 28 U.S.C. § 1407 (1976) (particularly § 1407(h), providing that actions under § 4C of the Clayton Act may be transferred to *any* district for pretrial and trial).

be.⁵

It would have been an anachronism for such a concept to have occurred to the draftsmen of the Judiciary Act of 1789,⁶ however, and highly impolitic for them to have attempted its enactment if the idea had occurred to them. As it was, the Judiciary Act sited venue where the defendant might be found,⁷ while the Process Act implicitly limited the territorial range of federal process to that of the state courts,⁸ *i.e.*, the territorial limits of the state in which the federal court sat. And not too long afterward, the Court in *Strawbridge v. Curtiss*⁹ held that diversity in federal proceedings must be "complete," so that diversity jurisdiction ordinarily could not be exercised if any plaintiff was a co-citizen of any defendant.

Although these limitations on the federal courts' potential in adjudicating cases involving multistate elements were of ancient lineage, none was of a constitutional dimension.¹⁰ In recent times, at least by the 1950s, the idea of federal jurisdiction over such cases surely had become politically acceptable. Serious analysts of our judicial system argued that the federal courts should be vested with jurisdiction over such cases,¹¹ but nothing came of it, nor will anything come of it in the future. Diversity jurisdiction, instead of being redesigned to accommodate complicated multistate litigation, is apparently destined for complete abolition.¹² That would not be a legal disaster; indeed, it would surely be a sound decision to make, given the competing demands on the federal judicial system.¹³ But the abolition of diversity jurisdiction would give official recognition to the proposition that, in the future, litigation with significant multistate elements will have to be adjudicated in the state courts.

⁵ See 4 C. WRIGHT & A. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1125 (1969).

⁶ See, *e.g.*, *Milligan v. Milledge*, 7 U.S. (3 Cranch) 220 (1805); *Joy v. Wirtz*, 13 F. Cas. 1172 (C.C.D. Pa. 1806) (No. 7554); *Weymouth v. Boyer*, 30 Eng. Rep. 414 (Ch. 1792).

⁷ See Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73.

⁸ Process Act, ch. 22, § 2, 1 Stat. 93 (1789). See *Picquet v. Swan*, 19 F. Cas. 609 (C.C.D. Mass. 1828) (No. 11,134).

⁹ 7 U.S. (3 Cranch) 267 (1806).

¹⁰ *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530-31 (1967) (complete diversity requirement is statutory only); *Mississippi Pub. Corp. v. Murphree*, 326 U.S. 438, 442 (1946) (nationwide service of process); *Driver v. Helms*, 577 F.2d 147, 157 (1st Cir. 1978) (also upholding nationwide service of process). See also ALI, *STUDY OF THE DIVISION OF JURISDICTION BETWEEN FEDERAL AND STATE COURTS* 437 (Supporting Memorandum B) (1969).

¹¹ See Barrett, *Venue and Service of Process in the Federal Courts—Suggestions for Reform*, 7 VAND. L. REV. 608 (1954).

¹² See H.R. 9622, 95th Cong., 1st Sess., 123 CONG. REC. H11,222 (daily ed. Oct. 18, 1977), and its counterpart in the Senate, S. 2389, 95th Cong., 2d Sess., 124 CONG. REC. S28 (daily ed. Jan. 19, 1978).

¹³ See Bork, *Dealing with the Overload in Article III Courts*, 70 F.R.D. 231 (1976). But see Association of the Bar of New York City Committee on Federal Legislation, *Federal Diversity Jurisdiction*, 33 REC. 493 (1978).

Cases of the type under consideration are a statistically insignificant component of the judicial business of the nation's court systems. They raise problems of legal importance in our federal system, however. The legal concepts of federalism are tested not by their sufficiency in solving merely routine problems, but by their sufficiency in solving problems that are unusual yet recurrent. It is disturbing and repugnant that the legal system of the federal union might be unequal to the task of dealing with multistate, multiparty litigation according to standards of procedural fairness now universally recognized.¹⁴ But since the federal court system apparently cannot perform this task, it becomes the responsibility of the state court systems to do so. More particularly, it falls to the state supreme courts and to the United States Supreme Court to fashion the jurisdictional doctrine that will permit the states to fulfill this responsibility.

THE DIFFICULT CASES

At this point, it will be helpful to clarify precisely the kinds of cases that are under consideration. These cases have two basic characteristics. First, they involve state law elements, wholly or predominantly, as distinct from federal law elements. Cases involving chiefly federal law elements are the business of the federal courts; if federal court venue and range of process are inconvenient, congressional legislation can and should be amended to remedy the situation, as indeed it sometimes has been.¹⁵ Second, the cases involve more than two parties who reside in two or more states. In two-party litigation these days, a plaintiff can usually have a forum in the place where the transaction arose, by virtue of the "minimum contacts" rule and "long arm" statutes.¹⁶ In some situations, through the mechanism of attachment, a plaintiff can have a forum in the place where he himself lives;¹⁷ at worst, he can have a forum where the defendant can be found.¹⁸ But in multistate litigation, the situation can be more difficult for the plaintiff. It is a difficulty, moreover, that implicates the fairness of the system of administered justice. Unless the plaintiff can find a forum where the controversy can be adjudicated in one proceeding, the controversy may

¹⁴ The principles of joinder that are the basis for the analysis in the text are those expressed in the Federal Rules of Civil Procedure, now adopted in the substantial majority of the states. *See* C. WRIGHT, A. MILLER, & E. COOPER, *FEDERAL PRACTICE AND PROCEDURE* §§ 9-9.53 (Interim Pamphlet to Jurisdiction and Related Matters 1977).

¹⁵ So also it is a matter for congressional remedy if federal law be construed to restrict joinder of claims and parties in actions that are predominantly federal in substantive character. *See* *Aldinger v. Howard*, 427 U.S. 1 (1976).

¹⁶ *See, e.g., Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961); *RESTATEMENT (SECOND) OF JUDGMENTS* §§ 7-10 (Tent. Draft No. 5, 1978).

¹⁷ *See* *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966). *See, e.g., O'Connor v. Lee-Hy Paving Corp.*, 579 F.2d 194 (2d Cir. 1978).

¹⁸ *See, e.g., MacLeod v. MacLeod*, 383 A.2d 39 (Me. 1978).

have to be decided in pieces. Piecemeal litigation carries with it the possibilities of repetitive, incomplete, and inconsistent adjudication. That is, piecemeal litigation gives rise to the procedural difficulties sought to be avoided through such procedural rules as those governing alternative pleading, necessary parties, counterclaim, impleader, interpleader, and consolidation of actions.¹⁹ The problem is whether rules of jurisdiction can be conceived that secure the benefits of these rules in cases having multistate elements.

The cases for which provision has to be made come in several procedural forms, but have a common element: they each involve at least three parties so situated in geographical location and in alignment of interest that all cannot be brought into a single litigation except by the compulsion of process. It should be noted that there are situations involving multiple parties and multiple states that do *not* involve this element. Thus, suppose that *A* and *B*, being citizens of Illinois and members of the same family, travel to Iowa and there suffer at the hands of *C* in an automobile accident, food poisoning, conversion of their property, usury, or whatever. *A* and *B* have the opportunity, means, and incentive to communicate with each other, pool their resources, and unify their legal strategy. Under present procedural law, *A* and *B* can join as plaintiffs in a suit in Iowa and thus prosecute their claims in a single forum. So also if *E*, being a citizen of Illinois and travelling in Iowa, should suffer the consequences of joint or concurrent acts of *F* and *G*, citizens of Iowa, *E* can have process against both *F* and *G* in Iowa under present law. In both instances, there is a party who, under traditional doctrine, might not be subject to process in Iowa, where the transaction occurred. But in both instances, that person is the injured party, and the injured party has incentive to commence the action and thereby submit to the jurisdiction of the Iowa court. Hence, the system of jurisdictional and procedural rules, operating in the milieu of party incentives, yields the result that all interested parties are brought before a single, reasonably convenient forum. The controversy, accordingly, can be adjudicated once and for all. That is, the system has succeeded.

The problem cases, however, are those multiparty controversies in which the rules in the milieu of incentives do not yield a procedurally successful result. They involve parties so situated in geography and interest that they cannot so readily all be brought into a single litigation. Thus, suppose the following instances:

1. *P* sues *D* to enforce an obligation that *D* contends is or may be owing to *C* rather than *P*, where *P*, *D*, and *C* all live in different states. Procedurally, this case could take the form of an action by *P* against *D* in

¹⁹ See generally McCoid, *A Single Package for Multiparty Disputes*, 28 STAN. L. REV. 707 (1976).

which *D* objects that *C* should be joined as a necessary party,²⁰ or it could take the form of an action of interpleader by *D* against *P* and *C*.²¹

2. *P* sues *D* to enforce an obligation that *D* contends is or may be owing, in whole or in part, from *C* to *P*, rather than from *D* to *P*, and where *P*, *D*, and *C* live in different states. This could take the form of an action by *P* against *D* in which *D* seeks to implead *C*.²² Or it could take the form of an action by *D* against *P* and *C* for a declaratory judgment on the parties' respective rights and liabilities concerning the obligation.

3. *P* sues to enforce an obligation that he contends is owed by *D* and *C*, where *D* and *C* live in different states.²³ This is essentially a variation of hypothetical 2.

4. *P* sues *D* to enforce an obligation that is similar to, and arises from the same transaction as, an obligation that *C* also has against *D*, where *C* lives in a different state from *P* and *D*. This could take the form of an action by *P* and *C* against *D*.²⁴ If there were many persons having claims against *D* in the transaction in question, the action could take the form of a class suit by *P* on behalf of all persons similarly situated, including *C*.²⁵

5. *P* sues to enforce a claim concerning property, located in state *X*, that is inconsistent with a claim that *D* has to the property, where *P* lives in state *X* but *D* lives in state *Y*. This could take the form of a quiet title suit by *P* against *D*.²⁶ If *D* was one of many persons having claims to the property, it might take the form of an action by *P* against *D*, where *D* is named as representative of a class consisting of such claimants.²⁷

There are many other variations that might be conceived. However, they would all pose this common problem: (1) There is a forum to which at least one plaintiff will repair because he has an incentive to litigate rather than suffer his loss or legal uncertainty without redress; (2) In that forum, an opposing party can be subjected to service of

²⁰ See *Barer v. Goldberg*, 20 Wash. App. 472, 582 P.2d 868 (1978).

²¹ See *Atkinson v. Superior Court*, 49 Cal. 2d 338, 316 P.2d 960 (1957), *appeal dismissed*, 357 U.S. 569 (1958). See also *New York Life Ins. Co. v. Dunlevy*, 241 U.S. 518 (1916).

²² See *Lazarow, Rettig & Sundel v. Castle Capital Corp.*, 63 A.D.2d 277, 407 N.Y.S.2d 490 (1978); *Fantis Foods, Inc. v. Standard Importing Co.*, 63 A.D.2d 52, 406 N.Y.S.2d 763 (1978). But see *Mid-Continent Freight Lines, Inc. v. Highway Trailer Indus., Inc.*, 291 Minn. 251, 190 N.W.2d 670 (1971), where the court refused to sustain assertion of jurisdiction through impleader over the nonresident third-party defendant.

²³ See, e.g., *Buckeye Boiler Co. v. Superior Court*, 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969); *DeCook v. Environmental Security Corp.*, 258 N.W.2d 721 (Iowa 1977); *State ex rel. Sperandio v. Clymer*, 568 S.W.2d 935 (Mo.), *vacated sub nom. Pemberton v. Sperandio*, 439 U.S. 812 (1978); *Peterson v. Ely*, 279 Or. 581, 569 P.2d 1059 (1977).

²⁴ See, e.g., *Hardrives, Inc. v. City of LaCrosse*, 307 Minn. 290, 240 N.W.2d 814 (1976).

²⁵ See *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292 (1977), *cert. denied*, 434 U.S. 1068 (1978); *Schlosser v. Allis-Chalmers Corp.*, 86 Wis. 2d 226, 271 N.W.2d 879 (1978); Note, *Toward a Policy-Based Theory of State Court Jurisdiction Over Class Actions*, 56 TEX. L. REV. 1033 (1978).

²⁶ See, e.g., *In re Marriage of Breen*, 560 S.W.2d 358 (Mo. Ct. App. 1977). See also *Schuehler v. Pait*, 239 Ga. 520, 238 S.E.2d 65 (1977).

²⁷ See *Smith v. Swormstedt*, 57 U.S. (16 How.) 288 (1853).

process under well-established concepts of territorial jurisdiction, particularly where the defendant is a local resident or the transaction occurred in the forum state; (3) But there is another party, sometimes a person who properly should be a defendant and sometimes a person who properly should be a plaintiff, over whom the problem of service of process is more uncertain as the law of state territorial jurisdiction now stands. The question thus presented, and central to this article, is whether that state law can be reconceived to accommodate the joinder.

JURISDICTIONAL THEORY

Under the present law of state court jurisdiction, it seems pretty clear that a defendant who is present in a state may be sued there, at least if his presence is not merely temporary, or if the transaction arose within the state in whole or in significant part.²⁸ It is also clear that a state in which a transaction occurred, in whole or in significant part, may exercise jurisdiction over anyone who can be said to have done an act that had foreseeable consequences within the state.²⁹ The theory sustaining the exercise of jurisdiction in such circumstances proceeds on the notion that the claim is "in personam" and that there is jurisdiction "over the person" of the party to be brought in. Jurisdiction "over" that "person" is sustained if he was present or had such involvement in the transaction as to satisfy the "minimum contacts" requirement.

The "minimum contacts" concept is notoriously supple, if not infinitely so, as *Kulko v. Superior Court*³⁰ reminds us. The important question, however, is not whether the concept is elastic, but which form it ought to be stretched upon. One form is simply to consider the summoned party's connection with the state regarding the original out-of-court transaction. That harkens back to *Pennoyer v. Neff*.³¹ Another form is to consider the summoned party's connection to the larger legal event consisting of the out-of-court transaction *plus* litigation in a single action in a reasonably convenient court. *International Shoe Co. v. Washington*³² can be read as approving that version of "minimum contacts," although *Hanson v. Denckla*³³ cannot. Moreover, the much-ne-

²⁸ The action may be terminated on the basis of the rule of forum non conveniens, but as that rule is usually administered, dismissal is conditioned upon the defendant's being subject to jurisdiction in some more appropriate forum. See, e.g., *MacLeod v. MacLeod*, 383 A.2d 39, 42-43 (Me. 1978). See *Sybron Corp. v. Wetzel*, 61 A.D.2d 697, 403 N.Y.S.2d 931, *modified*, 46 N.Y.2d 197, 385 N.E.2d 1055, 415 N.Y.S.2d 127 (1978).

²⁹ See, e.g., *Buckeye Boiler Co. v. Superior Court*, 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969).

³⁰ 436 U.S. 84 (1978).

³¹ 95 U.S. 714 (1877).

³² 326 U.S. 310 (1945).

³³ 357 U.S. 235 (1958).

glected decision in *Western Union v. Pennsylvania*³⁴ may compel acceptance of the idea that a reasonably convenient state court has jurisdiction over all persons whose joinder is necessary to do consistent justice in a multiparty, multistate controversy. Several recent state court decisions reflect a belief that such is now the law.³⁵

There is, however, an alternative avenue of analysis that may be pursued in accordance with accepted doctrine. This approach proceeds on the notion that there is a "thing" with which the forum has a connection and that jurisdiction may be exercised over persons having claims relating to this thing. Put differently, the action can be conceived as one in rem in which interests of various persons in the *res* will be determined. Use of such a concept seems most apt where the "thing" is real property.³⁶ We think of real property as necessarily having a fixed location with which transactions concerning it have some kind of connection. Yet, the notion that an action concerns a "thing" has application to actions other than those involving real property. An assimilation can be made, for example, between real property and tangible personal property located in a specific place, such as a ship. We see this being done in the classic admiralty in rem proceeding. A further assimilation can be made between tangible personal property and intangible personal property, such as stock in a corporation. Hence, a stockholder's relationship to a corporation in which he has ownership can be conceived as giving rise both to an in personam action by the stockholder against the corporation (or vice versa), *and* to an in rem proceeding to determine the interests of the stockholder and corporation in the "thing" consisting of their relationship.³⁷ The status of marriage has long been conceived this way.³⁸ Furthermore, an assimilation can be made between intangible personal property and a debt or chose in action arising in contract. On this basis, wherever the debt can be said to be located, jurisdiction can be exercised to determine the claims of persons interested in the obligation. That, of course, was the theory of such cases as *Harris v. Balk*³⁹ and *Pennington v. Fourth National Bank*.⁴⁰

The recent decision in *Shaffer v. Heitner*⁴¹ does not repudiate this way of looking at a debtor-creditor relationship. That case, it will be recalled, held that a state may not exercise jurisdiction over a person where the sole basis of jurisdiction is the fact that the person owned

³⁴ 368 U.S. 71 (1961).

³⁵ See particularly cases cited in notes 22-26 *supra*.

³⁶ See *Arndt v. Griggs*, 134 U.S. 316 (1890).

³⁷ Compare the fact situation in *Shaffer v. Heitner*, 433 U.S. 186 (1977).

³⁸ See, e.g., *Estin v. Estin*, 334 U.S. 541 (1948).

³⁹ 198 U.S. 215 (1905).

⁴⁰ 243 U.S. 269 (1917).

⁴¹ 433 U.S. 186 (1977).

intangible property whose situs could be attributed to the state.⁴² The Supreme Court stated that jurisdiction could be exercised only if the defendant had "minimum contacts" with the state, *i.e.*, if the transaction at issue in the litigation had some kind of connection to the forum.⁴³ But this does not constitute a rejection of the notion that obligations can be treated for jurisdictional purposes as "things" that are "within" a state. On the contrary, in imposing the "minimum contacts" requirement on the exercise of attachment jurisdiction, the Supreme Court may be said to have legitimated the concept of an obligation as a *res*, while pruning away some of the more aggressive doctrinal tendrils associated with the concept. Put differently, *Shaffer v. Heitner* can be read as meaning that we may look at a legal relationship as a "thing" so long as in doing so we do not extend jurisdiction beyond the limits of the "fair play" required by *International Shoe Co. v. Washington*.⁴⁴ Thus, *Shaffer v. Heitner* permits us to continue doing what we have done for a long time—when it has proved convenient. We have done so where the obligation was an ordinary contract, or of marriage, or where it was a tort associated with a thing, as in the case of the ship in admiralty. Moreover, there is no analytic reason why the concept of an obligation as a "thing" cannot be generalized, so that we may look at a tort obligation as a thing arising where the tort occurred, a thing that is at once an unliquidated obligation in favor of the injured person and a negative asset of the alleged tortfeasor. The forum's task is to determine whether the liability exists and, if it does, what its magnitude is. All persons having an interest in the thing can be joined, whether they have a plaintiff's interest in the claim or a defendant's interest in the liability.⁴⁵

In the realm of pure concept, these approaches—in personam focusing on the people and in rem focusing on the event—are equally plausible. Use of either is usually permissible in any given case, as the Supreme Court itself has demonstrated. And if anyone thinks we have gone through the looking glass, he should reread *Seider v. Roth*.⁴⁶ Hence, under one conceptual approach or another, all of the problem cases mentioned earlier could be sited in a single forum that could validly exercise jurisdiction over all the absentees.

JURISDICTIONAL RULES

The point of this conceptual analysis is not to justify every exercise of state court jurisdiction that the concepts might embrace. Far from it.

⁴² *Id.* at 209.

⁴³ *Id.* at 209-12.

⁴⁴ 326 U.S. 310 (1945).

⁴⁵ See *Barer v. Goldberg*, 20 Wash. App. 472, 582 P.2d 868 (1978), and cases cited in note 26 *supra*.

⁴⁶ 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

The point is only to show that these jurisdictional concepts can be used to accommodate almost any set of results about jurisdiction that a discriminating doctrinal artist might wish for. The important question, then, is not what can be made of the concepts, but what should be made of them—what the law of state court jurisdiction ought to be.

In part, the answer to this question depends upon the premises from which one begins. One can start, for example, with something like the following set of ideas: The federal union is made up of separate states; the states are endowed severally with sovereign power to administer civil justice; state sovereignty is delimited by state territory; and only such matters as can be considered “within” the state’s territory are within the state’s judicial sovereignty. In this limited view of things, the modern “minimum contacts” principle is merely a constraint on a theory of jurisdiction that is based on a concept of the states as independent polities. The state court systems are thus to be autonomous, self-sufficient, self-regarding, and preoccupied with their separate legal existence, even at the cost of being collectively ineffective to dispose of complicated multistate cases.

On the other hand, one can view each state’s court system as a constituent of a national legal system whose common objective is to supply an appropriate forum for every domestic case, however complicated. Under this view, the proper measure of a state’s judicial authority is not what the state as an independent polity might legitimately do, but what it ought to do in tacit collaboration with courts of other states in order to establish a coherent national system of civil justice. Jurisdictional theory, if bent to this task, would be informed by the venue rules governing location of litigation that the states themselves have established for their internal use and that Congress has established for the federal court system.⁴⁷ These rules usually specify that the location of litigation shall be where at least one of the defendants resides, or where the transaction arose, or, in the case of limited classes of presumptively disadvantaged plaintiffs, where the plaintiff resides. These rules are also subject to the modifying rule that transfer may be made to a more convenient place.⁴⁸ In the interstate situation, that result can be accomplished through the rule of *forum non conveniens*.

Thus, there is a choice among basic interpretations of the jurisdictional problem. According to the interpretation advanced here, state court territorial jurisdiction is essentially a problem of interstate venue. In the opinion of state court judges of Walter Schaefer’s stature, would that be demeaning?

⁴⁷ See also Stevens, *Venue Statutes: Diagnosis and Proposed Cure*, 49 MICH. L. REV. 307 (1951).

⁴⁸ See 28 U.S.C. § 1404(a) (1976).